THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.2931 OF 2006

DATED: 18th AUGUST, 2006.

Between :

Sri S. J. Muralikrishna .. Petitioner

And

1. Singareni Collieries Co. Ltd., rep. by its
   General Manager, Ramagundam Division-I,
   Godavarikhani, Karimnagar District;
   And 3 others. … Respondents

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ORDER :

The petitioner was awarded a contract by the respondents for transporting coal from GDK.6A incline to different CSPs/CHPs on weight basis. The work order was issued to that effect on 2-7-2005 and the petitioner was directed to start the work w.e.f. 27-7-2005.

While so, a press report was published in Eenadu Telugu Newspaper dated 9-10-2005 to the effect that the coal was illegally transported outside the Singareni Collieries by the contractor. Basing on the said news-item, the 1st respondent addressed a letter dated 13-10-2005 calling upon the petitioner to explain within four (4) days as to why the lorries engaged by the petitioner for transporting coal should not be prohibited from transporting the coal and why the contract should not be terminated. The petitioner gave a reply on 18-10-2005 denying the allegations mentioned in the news-item and explaining that he never involved in any such illegal transportation of coal. The 1st respondent addressed another letter dated 20-10-205 asking the petitioner to inform whether he had any coal business apart from transportation of coal from GDK.6A incline to GDK.CSP.1A as per the work order dated 2-7-2005. In response to the same, the petitioner sent a reply dated 22-10-2005 informing that he had a coal trading business which is a partnership firm. The petitioner also addressed a letter dated 29-10-2005 to the General Manager, Godavarikhani

requesting to allow his lorries for transportation of coal as he was put to several financial loss due to stoppage of his vehicles. He also made similar representations to the respondents 1 and 2. Since there was no response, the petitioner got issued a legal notice to the 1st respondent requesting to allow him to transport coal as per the contract.

In the meanwhile, a complaint was lodged by the Senior Inspector, Singareni Collieries Company Limited (SCCL) before Velgatoor Police Station under Section 379 of I.P.C. The police after thorough investigation filed a final report before the Judicial Magistrate of First Class, Peddapalli stating that it was a mistake of fact. In spite of the same, the petitioner was not allowed to transport the coal, and aggrieved by the same the petitioner filed W.P.No.26606 of 2005. The said writ petition was disposed of by this Court by order dated 22-12-2005 leaving it open to the petitioner to submit his explanation within one week, if not already submitted, and further directing the 1st respondent to pass final orders in the matter within 15 days from the date of receipt of such explanation. Pursuant thereto, the 2nd respondent passed the impugned order dated 4-1-2006 terminating the transport contract awarded to the petitioner. The petitioner was also informed that the lorries engaged by him had been banned from any further business dealings of the company for a period of two years.

The said order is under challenge in this writ petition contending inter alia that the petitioner did not have any knowledge about the allegation in the show-cause notice that 12 tubs of coal was loaded into his lorry bearing No.AP-5-Y-6150 on 15-9-2005. As a matter of fact, in his explanation he had categorically denied the knowledge of alleged diversion of coal by Lorry bearing No.AP-15-W-8050. Without considering the said explanation and without appreciating the fact that the petitioner had been carrying out the work of transportation of coal for the last seven years without any complaint,

the 2nd respondent had mechanically terminated the contract without valid reasons. Even assuming that the allegations are established, the 2nd respondent ought to have imposed a penalty or the security deposit could have been forfeited, but termination of contact is unwarranted and unjustified particularly since the very same allegation was found to be a mistake of fact by the Police and a report was already submitted to that effect before the Judicial Magistrate of First Class, Peddapalli.

On behalf of the respondents, a counter-affidavit has been filed stating that as per the terms and conditions of the contract the petitioner has a right of appeal to the concerned Director (Operations) / Director (Project Planning) over the decision of the General Manager and without exhausting the said remedy, the petitioner cannot maintain this writ petition. On merits, it is contended that pursuant to the news-item that the coal was transported illegally by the petitioner, the respondent took up an enquiry apart from lodging a complaint with Velgatoor P.S. about the theft of coal. In the show-cause notice dated 9-12-2005 the petitioner was informed about the allegations and the details of non-delivery of coal were also furnished. Though the petitioner submitted an explanation, it was found to be not satisfactory. Accordingly, the contract was terminated under the impugned order. So far as the report submitted by the police before the Judicial Magistrate of First Class, Peddapalli, detailed objections were being filed and the matter is pending before the learned Magistrate. The plea of the petitioner that he had no knowledge about the coal delivered by his lorry bearing No.AP-15-W-8050 was denied and it was contended that the order of termination was based on proper appreciation of the material on record.

I have heard the learned Counsel for both the parties and perused the material on record.

Admittedly, the work in question was awarded to the petitioner under the work order dated 2-7-2005. The said work order deals with

the nature and scope of the work in detail apart from terms and conditions applicable. Clause-27 of the work order provides for termination of contact, which runs as under :

> *"Notwithstanding anything mentioned above, the Director (Operations) / Director (PP) can terminated the contact with immediate effect without assigning any reason if he is of the opinion that you indulged in unfair means practices either with or without your knowledge, and the Director (Operations) / Director (PP) shall be the sole judge in this regard."*

A perusal of the above clause shows that the contract in question can be terminated by the Director (Operations) / Director (PP) if he is of the opinion that the contractor had indulged in unfair means/practices either with or without his knowledge. It is not in dispute that the impugned proceedings of termination were passed invoking the said clause. It is also not in dispute that before passing the said order, the petitioner was afforded an opportunity to putforth his version and after considering his explanation, the impugned order was passed assigning reasons. On a perusal of the said order, I am unable to hold that the impugned order of termination was without application of mind to the explanation offered by the petitioner. The report filed by the Police before the Judicial Magistrate of First Class, Peddapalli stating that it is a mistake of fact cannot be taken as conclusive and therefore on that ground it cannot be held that the petitioner was absolved of the allegations. As a matter of fact, the respondents stated that they have already submitted their objections to the report filed by the Police and that the matter is still under consideration by the learned Magistrate.

At any rate, the issue raised by the petitioner with regard to the validity of termination of contract is essentially founded on a dispute between the parties pursuant to a non-statutory contract entered into between them and the same is not amenable to writ jurisdiction.

As expressed above, the action of the respondents in terminating the contact cannot be held to be either arbitrary or in

violation of the principles of natural justice.

In the circumstances, the correctness of the findings recorded by the 2nd respondent that the allegations against the petitioner were established cannot be gone into by this Court.

It is true that in ABL INTERNATIONAL LTD. v. EXPORT CREDIT GUARANTEE CORPN. OF INDIA LTD.[1], it was held by the Supreme Court that in a given set of facts, if State acts in an arbitrary manner even in the matter of contract, aggrieved party can approach the Court by way of writ under Article 226 of the Constitution of India.

However, the dispute in the case on hand involves several disputed questions of fact with regard to the alleged irregularities committed by the petitioner in transportation of coal. Such disputed questions of fact which require a detailed enquiry and investigation into factual aspects cannot be gone into in writ proceedings under Article 226. Hence, no Mandamus can be issued to enforce the contractual obligations between the parties.

Accordingly, the Writ Petition is dismissed. However, it is made clear that this shall not preclude the petitioner to work out the appropriate remedy as available under law for redressal of his grievance, if any. If any such proceedings are instituted, the same shall be considered independently on merits without being influenced by any of the observations made in this order. No order as to costs.

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G. ROHINI, J.

Dt. 18–8-2006

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[1] (2004) 3 SCC 553